



Apprenticeship Training Trust

Associated Builders & Contractors

4499 Ruffin Road, Suite 300 • San Diego, CA 92123 • (858) 492-9300 FAX (858) 492-9394

1/31/2001

Mr. Anthony Swoope
National Director
U.S. Dept. of Labor
Bureau of Apprenticeship & Training
200 Constitution Avenue, NW
Suite# N - 4649
Washington, D.C. 20210

cc: DSNIP

2/14/01

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Re: Outright Discrimination by the California Apprenticeship Council -
A.B. 921

Dear Mr. Anthony Swoope:

Last year, the California legislature enacted revised apprenticeship rules and regulation under Assembly Bill# 921.

At that time, the California Apprenticeship Council formed a standing Rules committee with multiple subcommittee responsibilities in various apprenticeship areas to come up with recommendations for the rules revisions.

I was invited by DAS to serve on the Audit subcommittee which provided a series

new meaningful recommendations to the standing rules committee. Our subcommittee consisted of two union and two merit shop members that currently operate (active) apprenticeship programs in California.

Initially, I was pleased we got along and came up with reasonable recommendations that we collectively felt was a balanced approach to future program audits.

By the time our written recommendations reached the standing rules committee, many of the recommendations were "changed" "in favor of the Union" program concept".

My first thought was anger, yet my second thought was - "don't the unions know they too will be subject to the same (revised) apprenticeship rules and regulations???"

>From that period on over a year ago, the various subcommittee recommendations have been written in favor of the unions. Many are convinced this move was an effort to force merit shop apprenticeship programs to close and that the former apprentices seek out the union apprenticeship programs.

It is also an attempt to create highly inflated apprentice wage rates, not to help the apprentices livelihood, but to force merit shop subcontractors to not be able to afford

pay the higher wage rates that are in line with many of the union wages.
es.

This series of (revised) partisan rules and regulations was adopted at last

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Thursday's

January 25th) C.A.C. meeting in Long Beach. CAC Commissioner Balgenorth
the gall to issue a "four page revision" of the CAC's proposed standards
as a false method to give the impression he and other CAC union members
understood many of our letter writing concerns late last year, by softening
the harsh proposed regulations they had developed. I assure you no one was
fooled by this ploy demonstrated at the same time of the actual vote.

The current CAC currently has approximately 85 - 90% union supported
members at this point. The last two open shop members are due to be replaced
this February.

For the last year and a half, many open shop apprentices, contractors,
instructors, employers and apprentice administrative staff, continue to
frustratingly ask:

"When will someone step in to deal with these blatant forms of discrimination
against the open shop apprentices and their employers.

Although we have communicated our concerns to the Governor, DAS and multiple
times to the CAC verbally and in written form, nothing to date has been done.
We sent thousands of letters last year to the CAC, the Office of
Administrative Law
and the Governor, but it's clear politics continues to prevail over the
futures of our
collective Statewide apprentice program participants.

We are asking that the U.S. Department of Labor's Bureau of Apprenticeship
Standards under Federal BAT regulations (CFR - 2929), to move quickly to
investigate this serious economic and discriminatory behavior of the partisan
appointees of the California Apprenticeship Council.

If the recently adopted apprenticeship rules and regulations are not
overturned
to be reasonable and fair to all California program participants, I for one
would
recommend the B.A.T. re-establish Federal jurisdiction over California
apprenticeship
programs to maintain the public faith and goodwill and continue to Statewide
success that so many apprentices have committed themselves to in decades past.

The playing field has not been level for over 1 1/2 years between the
majority
CAC union representation.

The open shop apprenticeship programs and their member employers CANNOT
operate properly or effectively with many of the recently approved CAC rules
and
regulations. There are however, many provisions that are appropriately
written
and many that are not.

I wish to thank the Federal DOL for sending a representative to last weeks
meeting

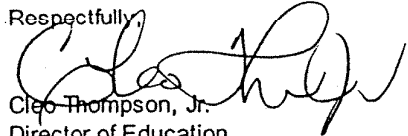
the first hand some of the concerns. The letter you drafted and was read
the audience suggesting a meeting to discuss and review these issues, was
largely ignored by most CAC commissioners. That meeting needs to take place
with

reasonable representation to include open shop contractors and apprenticeship program representatives.

Apologies if these concerns were not communicated back to you even though regular CAC attendees always included the California B.A.T. representatives.

Thanks for your sincere interest and your agency is our last hope to right the pending wrongs that have gone unchecked the last 1 1/2 years.

Respectfully,



Cleo Thompson, Jr.
Director of Education
Associated Building & Contractors, Inc.
San Diego, California

(858) 492 - 9300 214

cc: Mr. George Moton, President, CAAAT



CALIFORNIA ASSOCIATION FOR THE ADVANCEMENT
OF APPRENTICESHIP & TRAINING

9719 Lincoln Village Dr. #303 - Sacramento, CA 95827

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January 29, 2001

The Honorable Barbara Mikulski
United States Senator
709 Hart Building
Washington, DC 20510

FEB -3 A 3:15

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RE: **Comments Favoring Construction Trade Development
at Elaine Chao Confirmation Hearings - January 24, 2001**

Dear Senator Mikulski:

I happened to catch your questions directed toward Elaine Chao at her confirmation hearings on Wednesday, January 24, 2001. I was impressed by the sense of urgency you conveyed in pointing out the tremendous need for expanded training opportunities for young people who are considering careers in the construction trades.

As a California based association whose goal is to enhance and improved apprenticeship opportunities within this state, the CAAAT organization wishes to state its support for your work in furthering this important goal.

However, we would like to alert you to the fact that the California State Legislature has recently enacted regulations designed to limit training opportunities rather than expand them as you propose (see AB921 CA). We see this as a trend that should be seriously scrutinized at the federal level, and hope that you and your committee will work to discourage the proliferation of state laws that inhibit, rather than encourage participation in apprenticeship training.

Sincerely,



GEORGE MOTON

President

(916) 453-0112

c.c. U.S. Labor Secretary - Elaine Chao ✓
T. Swoope, Bureau Of Apprenticeship



Independent Electrical
Contractors, Inc.

Western Electrical
Contractors Association, Inc.
Sacramento Chapter of IEC

January 29, 2001

The Honorable Barbara Mikulski
United States Senator
709 Hart Building
Washington, DC 20510

*answer
needed*

RE: **Your Comments Favoring Construction Trade Training Development
at Elaine Chao Confirmation Hearings - January 24, 2001**

Dear Senator Mikulski:

Your questions, directed toward Elaine Chao at her confirmation hearings on Wednesday, January 24, 2001, were right on target. I believe you were sincere when you expressed the urgent need for expanding training opportunities for young people who are considering careers in the construction trades. The national focus has been upon college bound students.

I must alert you to the fact the California State Legislature recently enacted regulations designed to limit apprentice training opportunities throughout the state. While you envision expanding opportunity for training, Governor Davis sought to limit opportunity by signing AB921, a bill that could be used to shut down many training programs.

We believe the federal Office of Apprenticeship Training should take a hard look at California's misguided efforts to discourage training opportunity. We ask that you and your committee work to discourage the proliferation of state laws that inhibit, rather than encourage participation in apprenticeship training.

WECA is a California-based electrical association with a state-approved apprenticeship program. Our stated goal is to provide a trained workforce now and in the future.

Sincerely,

Frank Stephens

FRANK STEPHENS

Government Affairs Director

c.c. to: U.S. Labor Secretary - Elaine Chao

and: T. Swoope, Bureau Of Apprenticeship

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EXECUTIVE SECRETARY
U.S. DEPARTMENT OF LABOR



JAN 23 2001

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Mr. Edward C. Sullivan
President, Building and Construction Trades Department
American Federation of Labor-Congress of Industrial
Organizations
Suite 600
815 Sixteenth Street, N.W.
Washington, D.C. 20006-4104

Dear Mr. Sullivan:

I have received your letter dated January 2, 2001, to Assistant Secretary Raymond Bramucci, requesting that the Office of Apprenticeship Training, Employer and Labor Services ("ATELS") be instructed to approve proposed Section 212.05 of Title 8 of the California Code of Regulations ("CCR"), Chapter 2, Part I, Apprenticeship. As discussed in your letter, proposed Section 212.05, which implements California Labor Code § 3075(b), would establish a "needs" standard for the approval of new apprenticeship programs.

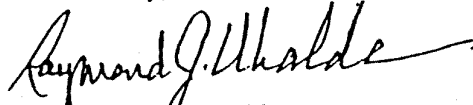
While we respect your efforts to promote and protect the quality of apprenticeship programs, we have concerns regarding the setting of a "needs" standard as California has proposed. Based on the available information, we believe that the California statute and proposed regulation would conflict with the National Apprenticeship Act ("NAA") and its implementing regulations at 29 CFR Part 29. As you are aware, the intent of the NAA is to not only protect the interests of apprentices, but also to promote apprenticeship opportunities.

We have contacted the California Apprenticeship Council and requested information which substantiates the basis for the needs test. Such information would enable the Department to understand why California set restrictions on the creation of new apprenticeship programs in the building and construction trades, as well as determine if those restrictions adequately conform with the Secretary's published standards for Federal purposes.

Once the Department of Labor has reviewed the pertinent information, we will pursue scheduling a meeting with the Division of Apprenticeship Standards, representatives from your office, and other appropriate parties to discuss the issues raised and to explore how any differences can be resolved.

If you have any questions, please contact Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services at 202-693-2796.

Sincerely,

A handwritten signature in cursive script, reading "Raymond J. Uhalde". The signature is fluid and extends to the right with a long, sweeping tail.

Raymond J. Uhalde
Deputy Assistant Secretary

cc: Henry Nunn, Chief, California Division of Apprenticeship Standards
Department of Industrial Relations

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275664

CC: Swape

EDWARD C. SULLIVAN, President
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Building and Construction Trades Department

AMERICAN FEDERATION OF LABOR - CONGRESS OF INDUSTRIAL ORGANIZATIONS
815 SIXTEENTH ST., N.W., SUITE 600 - WASHINGTON, D.C. 20006-4104

(202) 347-1461



FAX (202) 628-0724

January 2, 2001

The Honorable Raymond L. Bramucci, Assistant Secretary
Employment and Training Administration
U.S. Department of Labor
Room S-2307
Third and Constitution Avenues, N.W.
Washington, D.C. 20210

Dear Mr. Bramucci:

It is my understanding that representatives of the Office of Apprenticeship Training have expressed concern about adoption of certain proposed amendments and additions to Title 8 of the California Code of Regulations, Chapter 2, Part 1, Apprenticeship that the California Apprenticeship Council is now considering. This a request that the Office of Apprenticeship Training advise the California Apprenticeship Council that it has no objection to adoption of proposed Section 212.05, that would reestablish a so-called "needs" standard for approving apprenticeship programs.

These proposed amendments and additions came about as a result of enactment of Assembly Bill No. 921, which was signed into law on January 1, 2000, that amended the California Labor Code in order to address evidence which indicated that approved apprenticeship standards have been ignored; that apprenticeship programs have been established without any showing of a financial commitment by the program sponsors to the integrity of their programs; that apprentices were not receiving either the related and supplemental instruction and/or on-the-job training required under law; that apprentices have no meaningful avenue for the redress of their grievances against the programs to which they are indentured; and that the Division of Apprenticeship Standards within the State Department of Industrial Relations has sanctioned the practice of apprenticeship programs recruiting and operating in areas of the State outside their initially-approved geographical areas.

1/4/01
Tony S.
Where all we have
this?
Ray B

Much of the deterioration of the quality of apprenticeship programs in California resulted from the mistaken belief by the California Apprenticeship Council that it lacked the power or authority to condition approval of apprenticeship programs and standards on compliance with its rules and regulations. This misunderstanding resulted from a series of court decisions, including Southern California Chapter of Associated Builders & Contractors, Inc. Joint Apprenticeship Committee v. California Apprenticeship Council, 4 Cal. 4th 422, 841 P.2d 1011 (Cal. 1992), that held various actions of the California Apprenticeship Council were preempted under the Employee Retirement Income security Act ("ERISA"). However, in 1997, the U.S. Supreme Court held in California Div. Of Labor Standards Enforcement v. Dillingham Constr. Co., 519 U.S. 316 (1997), that states are not preempted from regulating apprenticeship training programs. Empowered by the Dillingham case, the California Apprenticeship Council now seeks to reassert its authority to regulate apprenticeship training.

Among the changes set forth in the California Apprenticeship Council's proposed regulations is an amendment of Section 212.05 that would reestablish a "needs" standard that refers to when a new apprenticeship program will be approved. That is, the sponsor of a proposed program will be required to establish that there is, in fact, a "need" to establish the proposed program. Section 212.05 is designed to implement Section 3075 of the Labor Code, which was amended by Section 7 of Assembly Bill No. 921. Section 3075 authorizes the California Apprenticeship Council to withhold approval of proposed "parallel" apprenticeship programs "in the building and construction trades" if an approved program already exists "serving the same craft or trade and geographic area unless:

1. The existing approved program lacks the capacity, has neglected or refused "to dispatch sufficient apprentices to qualified employers at a public works site who are willing to abide by the applicable apprenticeship standards," or
2. The existing approved program has been identified by the California Apprenticeship Council "as deficient in meeting their obligations under [the apprenticeship chapter of the Labor Code]."

I understand that Anthony Swoope, Administrator of the Office of Apprenticeship Training, has been advised by the Office of the Solicitor of Labor that proposed Section 212.05 of Title 8 of the California Code of Regulations "would[,] effectively preclude the approval of new apprenticeship programs in areas where there are existing programs which state that they have apprentices available to perform the work in question." Accordingly, the Solicitor's counsel is that proposed Section 212.05 of Title 8 of the California Code of Regulations is not legally acceptable because it "would reduce, rather than expand, apprenticeship opportunities."

The Honorable Raymond L. Bramucci, Assistant Secretary
January 2, 2001
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It is respectfully submitted that this conclusion is based on a faulty premise and, as a result, is incorrect. Section 212.05 is intended to prevent an over capacity of apprentices in one trade or craft in a given area. This was a concern of Congress when it enacted the National Apprenticeship Act, 29 U.S.C. §50, in 1937 upon which the California Apprenticeship Act is based.

When an apprentice makes the decision to commit three, four or five years of his/her life to acquiring the skills necessary to obtain journey status in a craft, and to work for less wages during the learning period, the State that certifies the program, registers the apprentice, and issues the journeyperson certificate, is at least implicitly representing that employment opportunities in that craft will be available upon that apprentice's graduation. Moreover, when there is a proliferation of apprenticeship programs in the same craft or trade and in the same geographic area, there may well be more apprentices in training than there are jobs available. This often results in apprentices dropping out in the later stages of the program because of a lack of work.

Consequently, if the State is aware that an apprenticeship program serving the same craft or trade is willing and able completely to satisfy the actual apprenticeship needs in the area, it encourages a counterproductive over-capacity of apprentices and a resulting reduction in the quality of training, when it approves a program simply because an employer or group of employers wants its/their own program in order to pay less-than prevailing wages on public works projects. Accordingly, proposed Section 212.05 would simply require the Chief of the Division of Apprenticeship Standards to consider this factor when determining whether to approve a new program. Clearly, therefore, the Solicitor's conclusion, that proposed Section 212.05 is legally unacceptable, lacks merit inasmuch as contrary to the Solicitor's underlying premise, the "needs" standard set forth in proposed Section 212.05 would actually enhance the quality of apprenticeship training in California, an objective embraced by Congress when it enacted the National Apprenticeship Act. Consequently, contrary to the Solicitor's conclusion, proposed Section 212.05 is entirely consistent with the purpose and objectives of the National Apprenticeship Act.

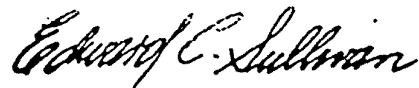
For this reason, it is requested that you instruct the Office of Apprenticeship Training to advise the members of the California Apprenticeship Council that it has no objection to the adoption of proposed Section 212.05 of Title 8 of the California Code of Regulations, Chapter 2, Part 1, Apprenticeship.

The Honorable Raymond L. Bramucci, Assistant Secretary
January 2, 2001
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Your attention to this matter is greatly appreciated inasmuch as action by the California Apprenticeship Council on the proposed promulgation of this regulation as a final rule is expected in a few days.

With kind personal regards, I am

Sincerely,



Edward C. Sullivan
President

cc: Robert Balgenorth, President, California Building and
Construction Trades Council, AFL-CIO
Anthony Swoope, Administrator, Office of Apprenticeship Training